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File No. O Lunacy/41

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the
Indian Lunacy Act 1912

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Office of the R.L.A.

It appears that the lunatic Rosa Tereza Miranda was admitted into the Colaba Lunatic Asylum, Bombay, on 15th October 1903 under a reception order passed by Lt. Col. A. Baker, I.M.S., as a private patient under section VII of Act XXXVI, 1858, her father Mr. Phillip Miranda having undertaken in writing to pay Rs. 5 per month as her maintenance charges. Mr. Phillip Miranda died on 21st June 1918. After his death Mr. Hohn Lyms Miranda took on the liability to pay the maintenance charges of the lunatic and paid them regularly upto 31st May 1940Thereafter Mr. John Miranda died and the maintenance charges fell into arrears. The lunatic's nephew Mr. Walter L. Miranda thereupon offered to pay the maintenance charges of the lunatic at the rate of 6 annas per day from 1st January 1941 and Government has provisionally accepted theoffer. The question for consideration of the Remembrancer of Legal Affairs is whether the arrears of maintenance charges from 1st June 1940 to 31st December 1940 can be recovered from the Bombay Municipal Corporation in whose jurisdiction the lunatic was residing prior to her reception into the Lunatic Asylum.

2. The lunatic in this case was admitted into the asylum as a private patient under a reception order passed by Lt. Col. Baker, I.M.S., under section 7 of the Indian Lunatic Asylums Act, 1858. This Act has since been replaced by the Indian Lunacy Act, 1912. Section 100(1) of the Indian Lunacy Act, 1912, provides that in the case of orders made before the commencement of this Act under section 7 of the Indian Lunacy Act, 1858, for the reception of a pe son into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a e rece tion order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a pe son who has signed an order under section 7 of the Indian Lunatic Asylums Act, 1858, before the commencement of this Act as if the order

had been made after the commencement of this Act upon a petition presented by him. Reception orders on petition are passed under sections 7 and 10 of the Indian Lunacy Act, 1912, by a Magistrate within the definition of section 3(6) of the Act. Consequently the order of reception of thelunatic Rosa Tereza Miranda into the asylum passed under section 7 of the indian Lunatic Asylums Act, 1858, is deemed to have been passed by such Magistrate under sections 88 of the Act will have no application and the Bombay Municipality cannot be made liable to pay the maintenance charges of the lunatic under that section . But since the lunatic in the present case was a resident of Bombay before she was admitted to the lunatic asylum, an order issued to the Municipality to pay the lunatic's maintenee-charge maintenance charges in this case would fix the Municipality with liability under section 62E of the City of Bombay Municipal Act, 1888. Such an order can be issued in the present ca se by the Presidency Magistrate concerned under rule 18(vii) of the Bombay Lunacy Rules made under section 91 of the Lunacy Act, in regard to the future maintenance of the lunatic. As regards the arrears of maintenance charges, they are required to be remitted under rule 18(vi) of the said Rules, and cannot be ordered to be recovered from the Municipality.

Sd/- P.N.M.

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emembrancer of Legal Affairs.

Sd/-
3-7-41

U.R. to G.D., No. 5950, dated the 9th July 1941.

R.I.No. 8677
12-9-1941

Office of the R.L.A.

There is no objection under the Indian Lunacy Act, 1912, to dealing with the observation cases in h the manner proposed by the Surgeon General in paragraphs. 8, 10 and 12 of his letter at page 6 ante. Rule 2 of the Bombay Lunacy Rules notified for observation un er section 16 of the Act in any district in which there is no men tal hospital shall be sent to a hospital or dispensary where suitable accommodation exists, or to a jail or lock up, as may seem most appropriate to the Magistrate or the Commissioner of olice. There is no Mental Hospital in the City of Bombay. Under this rule, therefore, a person ordered to be detained under section 16 of the Act can be sent obly to a hospital or dispensary or to a jail or lock up, The rule does not permit of such person being sent to a Mental Hospital outside the City of Bombay. In order, therefore, to achieve the object in view, it will be necessary to amend the rule. The rule may be amended by adding a proviso to the rule on the following lines:

"Provided that a person so ordered to be detained by a Magistrate or the Commissioner of Police, in the City of Bombay, may be sent to the "arottamdas "adhavdas Mental Hospital, Naupada, (Thana istrict)".

Sd/- P.N.M.
18-10

emembrancer of Legal Affairs.

Sd/-
18-10-41

U.R. to G.D.(thro: H.D.& F.D.), No. 9137, dated the 22nd Octo

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10512/13.11.41.

Submitted.

2. One insane patient named Banubai was admitted in the Mental Hospital, Nagpur, on 3.5.41, on a reception order issued by the City Magistrate, Nagpur, under sections 13, 14, 16 of the Indian Lunacy Act, 1912. It was however found that the patient was a resident of the Bombay City and went to the C.P. only on the 25th March 1941. The C.P. Govt. has consequently moved this Govt. to agree to the transfer of the patient to a mental hospital in this Province and to pay to the Govt. of the C.P. and Berar her maintenance charges at Rs. 40 p.m. till the date of her transfer and her travelling expenses. It is proposed to agree to the C.P.Govt's proposal for the transfer of the patient to the Central Mental Hospital, Yeravda, and to bear the cost of her transfer and the maintenance charges on her account for the period of her stay at the Mental Hospital, Nagpur. Before however agreeing to the proposal, it is proposed to decide the question of recovery of maintenance charges. It has come to the notice of this Govt. that the patient was about 10 years ago granted judicial separation from her husband one Saikhusroo Taimulji Raja, and the Court had then ordered that Banubai should get Rs. 45/- p.m. for her maintenance as well as the maintenance for her son. It appears that the husband used to remit the money by money order but since Banubai left Bombay, her mother isnot receiving money, as the money was sent by money order in the name of Banubai and was consequently returned to

S.A.K.

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the sender. It is therefore proposed to take action under section 88 of the Act for obtaining an order from the competent Court for the payment of the cost of maintenance of the lunatic by her husband who is legally bound to maintain her. The C.D. states that as the reception order was issued in this case by the CityMagistrate, Nagpur, steps for the recovery of the maintenance charges will have to be taken by the Magistrate concerned. The R.L.A. has been asked to state whether that view is correct.

3. Section 88 of the Indian Lunacy Act, 1912, provides that if a lunatic detained in an asylum or on a reception order made under section 14, section 15 or section 17, has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him..... ... the authority which made the reception order may apply to the High Court or District Court within the local limits of the original jurisdiction of which ..... the person legal y bound to maintain him resides..... for an order for the payment of the cost of the lunatic. As the authority which made the reception order in the case under reference was the City Magistrate, Nagpur, the application for an order for obtaining the cost of maintenance from the husband will have to be made to the competent Court also by that very Magistrate. The view taken in the C.D. office note dated 11-11-41 is correct .

Sd/-
15-11-41

S.A.K.

It is not clear under what specific provision of law the sub-Divisional Magistrate, Satara City passed an order on the 25th August 1941 directing the Satara Municipality to pay Rs.40-14-0 the arrears of maintenance charges of the lunatic Bai Nyajbi detained in the Mental Hospital, Yeravda, on a reception order passed under sections 14,15 and 16 the Indian Lunacy Act, 1912. It is true that under section 70 of the Bombay Municipal Boroughs Act, 1925, every municipality is bound to pay certain maintenance charges of a linatic out of its funds; but under section 88 of the Indian Lunacy Act it was necessary for the Sub-Divisional Magistrate who passed the reception order, to apply to the District court, Satara, for making an order directing the SataraMunicipality to pay the maintenance charges of the lunatic Bai Nyajbi. No such application appears to have been made as against the Municipality. In these circumstances the Satara Municipality will not be liable to pay the arrears of maintenance charges without an order of the Court passed under section 88 of the Lunacy Act (see R.L.A's opinion No. 4730 dated 17th May 1940) . The order passed by the Sub-Divisional Magistrate in the present case directing the State Satara Municipality to pay the maintenance is therefore not enforceable.

2. It is true that ordinarily it would have been competent for the Sub-Divisional Magistrate to apply to the District Court under section 88 of the Lunacy Act for payment of arrears of maintenance charges by the Satara Municipality. But in this case an application under section 88 was already made once ef for payment of arrears of maintenance charges out of the estate of the lunatic Bai Nyajbi on the basis that she had an estate applicable to her maintenance and the District Court inquired

into the matter and on being satisfied that the lunatic had an estate applicable to her maintenance passed an order under section 89(1)for the recovery of the arrears of maintenance charges out of her estate. The Sub-Divisional Magistrate having once made the choice of praying for recovery of the maintenance charges out of the estate of the ~~ex-lunatic-under-section-89(1),-it-is-doubtful-whether-the-Sub-Divisional~~ lunatic under section 88 and the court having granted it under section 89(1), it is doubtful whether the Sub-Divisional Magistrate can now again apply under section 88 for payment of the same maintenance charges by the ~~state~~ Satara Municipality on the ground that the order previously obtained for recovery of the same out of the estate of the lunatic was infructuous. Moreover it will be necessary to prove that the ex-lunatic was resident in the municipal borough for at least a year prior to her admission to the Mental Hospital. The amount to be recovered is also small. It would not, therefore, be advisable in the circumstances of this particular case to take any fresh steps under section 88 with a view to enforcing the liability as against the ~~Sta~~ Satara Municipality. The amount as suggested by the Commissioner in his endorsement at page 5 ante may be written off.

Sd/- P.N.M.

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Remembrancer of Legal Affairs,

U.R. to G.D., No. 10519, dated the 8th December 1941.